



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 10, 1998

Mr. Jim D. McLeroy
City Attorney
City of Sulphur Springs
430 Church Street
Sulphur Springs, Texas 75483

OR98-2158

Dear Mr. McLeroy:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118024.

The City of Sulphur Springs (the "city") received several requests for information from one individual. This requestor seeks the names and social security numbers of anyone hired at the city's waste water plant since May 1, 1997. He also asks for the names of individuals who were transferred to the waste water plant from other city departments. The requestor additionally seeks his own payroll records for April 1 through June 1, 1996, including his time cards for that same period. You submitted to this office as responsive to the request sample personnel file information.¹ You assert that all of the information requested is protected from disclosure under section 552.103(a) of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You submitted to this office a complaint filed in federal district court, alleging that the city engaged in employment discrimination. The requestor alleges that the city discriminated against him

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

when he was not rehired after applying for several positions in the waste water plant that were posted between May and November 1997. We agree that the city has shown that litigation is pending.

However, you have not explained how the requested records are related to the litigation at issue. Based upon our review of the filed complaint, we agree that the names and social security numbers of the individuals who were hired or who were transferred to the water department to fill the positions for which the requestor applied in 1997 are related to the pending litigation. Thus, you may withhold from disclosure the names of the individuals who were hired or transferred to the water department to fill positions for which the requestor applied in 1997. The social security numbers of those individuals, which could help to identify them, also are protected from disclosure.

You have not explained how the names and social security numbers of the other individuals who were hired or transferred are related to the litigation. It does not appear to this office that this information is related to the litigation. Section 552.103(a) does not protect from disclosure the names and social security numbers of individuals hired or transferred to fill positions other than the positions for which the requestor applied.

The portion of the request which asks for the requestor's own personnel and time card information appears, on its face, to be related to the discrimination complaint about the city's failure to rehire the requestor. However, once information has been seen by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). It would appear that the requestor has previously had access to his own time cards. You may withhold the payroll records to which the requestor has not previously had access. We note that the applicability of section 552.103(a) ends once the litigation concludes. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

You may withhold from disclosure under section 552.103(a) the names and social security numbers of individuals who were hired or who were transferred to the water department to fill the positions for which the requestor applied. The other requested social security numbers may be protected from disclosure under section 552.117 of the Government Code. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. The city must withhold from disclosure an employee's social security number if, as of the time of the request for the information, the employee had elected to keep the information private. Open Records Decision Nos. 530 at 5 (1989), 482 at 4 (1987), 455 (1987). Also, social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code. Open Records Decision No. 622 (1994).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 118024

Enclosures: Submitted documents

cc: Mr. Travis (Tot) Harman